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SIPDIS

STATE FOR EB/MTA/MST AND EAP/ANP
STATE PASS USTR FOR BWEISEL AND DKATZ
COMMERCE FOR GPAINE/4530/ITA/MAC/AP/OSAO

E.O. 12958: N/A
TAGS: ETRD ECON EFIN NZ
SUBJECT: 2005 NATIONAL TRADE ESTIMATE REPORT: NEW ZEALAND

REF: STATE 240980

¶1. Following is post's input for the 2005 National Trade Estimate Report on New Zealand. We assume that Washington agencies will provide updated trade and investment data.

¶2. We also note that the section on "Biotechnology Food Approval" should be consistent with the NTE on Australia.

¶3. Begin text of NTE submission:

IMPORT POLICIES

In general, tariff rates in New Zealand are low as a result of several rounds of unilateral tariff cuts that began in the mid-1980s and continued until the current Labor government, elected in 1999, decided to freeze further reductions until at least July 2005. The New Zealand government announced in September 2003 that it would resume unilateral tariff reductions. On July 1, 2006, New Zealand plans to begin gradually reducing its highest tariff rates of between 17 percent and 19 percent to 10 percent by July 1, 2009. The top rates apply mostly to clothing, footwear, carpets, and certain autos and auto parts. Ad valorem tariffs on other goods also will gradually be reduced to 5 percent by July 1, ¶2008. The New Zealand government will conduct a review in 2006 to determine rates after July 1, 2009.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Biotechnology Commercial Release Moratorium
New Zealand's Parliament passed the New Organisms and Other Matters (NOOM) Bill 2003 on October 14, 2003, ending New Zealand,s moratorium on acceptance of applications for the commercial release of products produced through modern agricultural biotechnology into the environment. The new law put in place a revised regulatory framework by amending the Hazardous Substances and New Organisms (HSNO) Act 1996, under which the moratorium was scheduled to sunset on October 29, ¶2003. New Zealand's commercial release moratorium had precluded applications for the commercial planting of biotechnology crops, the commercial importation of biotechnology seeds, and the release into the environment of biotechnology animals. It did not, however, affect the use and sale of processed biotechnology foods and ingredients or veterinary medicines.

The NOOM Bill 2003 provides for a new conditional release category of approval for new organisms, including biotechnology products. This will permit New Zealand's Environmental Risk Management Authority (ERMA) to accept for review and its approval applications for release of biotechnology products with controls applied on a case-by-case basis. Under the provisions of the NOOM Bill, ERMA now will be able to approve a conditional release for biotechnology products that will allow field trial activity to expand from the limited scope of a fully contained trial to larger farm scale, encouraging ongoing research activity in New Zealand. Products from large-scale conditional field trials that ERMA may now approve could be sold domestically if the terms of project approval do not explicitly preclude such sales.

A Member of Parliament representing New Zealand,s Green Party is sponsoring an amendment to the HSNO Act, which would reinstate the ban on the commercial release of genetically modified organisms into the environment until 2008. The bill is not likely to receive its first reading in Parliament before early 2005. After the first reading, Members of Parliament will vote on whether the bill should move forward to a select committee or be removed.

Biotechnology Food Approval
Imported biotechnology foods can be offered for sale and consumption in New Zealand after being assessed and approved by Food Standards Australia New Zealand (FSANZ) under delegated authority of the New Zealand Food Safety Authority (NZFSA). In mid-1999, a mandatory standard for foods produced using modern biotechnology came into effect. The standard established under the Food Act 1981 prohibits the sale of food produced using gene technology, unless the food has been assessed by FSANZ and listed in the food code standard. FSANZ

had received 28 applications for safety assessments of bioengineered foods as of March 2004. Of these, 23 had been approved, four applications were being processed, and one approval request was withdrawn.

Biotechnology Food Labeling
Mandatory labeling requirements for foods produced using gene technology became effective in December 2001. Biotechnology labeling is required if a food in its final form contains detectable DNA or protein resulting from the application of biotechnology, with a few exceptions. Meeting New Zealand's biotechnology food labeling regulations places a burden on manufacturers, packers, importers, and retailers. They are especially relevant for U.S. agricultural exports, which consist primarily of processed food. Wholesalers and retailers frequently demand biotechnology-free declarations from their supplier/importer, which passes liability in the event of biotechnology labeling non-compliance back to the importer. New Zealand food legislation requires businesses to exercise due diligence in complying with food standards, which usually is defined as maintaining a paper or audit trail similar to a quality assurance system.

The NZFSA conducts periodic compliance audits. Individuals and companies found to be in non-compliance with biotechnology food labeling requirements may be assessed penalties under the Food Act 1981. The New Zealand government is reviewing authorized penalties stipulated under the act to make sure that they represent an adequate economic deterrent. New Zealand food retailers are discouraged from sourcing biotechnology food products, in part because of these regulations.

A retail food audit conducted by NZFSA in September 2004 reportedly found 17 of the 117 processed products evaluated to have genetically modified (GM) content that exceeded a 1 percent threshold. These included two products that had been labeled as GM-free, which were referred to the New Zealand Commerce Commission for action under the Fair Trading Act ¶1986. Additional NZFSA measures were taken to ensure that companies involved with those products whose labels failed to provide information on their GM content, but did not have false GM-free declarations, meet future labeling compliance standards.

Sanitary and Phytosanitary (SPS) Measures
New Zealand maintains a strict regime of SPS control for virtually all imports of agricultural products. The United States and New Zealand have held discussions on New Zealand,s highly conservative regulatory approach as well as on specific SPS issues. The two sides continue to make progress in addressing specific issues that negatively impact trade in products supplied by the United States.

Beef. U.S. beef and beef variety meats were restricted from entering New Zealand following the December 2003 announcement of bovine spongiform encephalopathy (BSE) in the United States. Import restrictions also have been imposed on live cattle, certain pet food, non-protein free edible tallow, and U.S. processed food products containing beef such as soups or those containing gelatin made from bovine bone material. New Zealand imports of U.S. bovine products for human consumption now require assessment and approval by NZFSA on a case-by-case basis before importation. This can be time consuming, results in additional costs to importers and exporters, and deters sales. As of early December 2004, the NZFSA had not yet responded to a U.S. Department of Agriculture (USDA) request for New Zealand to accept U.S. BSE control measures as equivalent to that of New Zealand. This would eliminate individual product approval procedures initiated following the BSE detection in the United States. A country assessment review by the Ministry of Agriculture (MAF) is under way which would permit a reinstatement of New Zealand,s Import Health Standard (IHS) for U.S. live cattle and a resumption of trade.

Table Grapes. The New Zealand Ministry of Agriculture (MAF) in September 2002 issued a new IHS for the import of table grapes from California that effectively reopened trade to U.S. exporters. The IHS contained specific mitigation measures to address the detection of post-border, black widow and other exotic spiders. As of December 2004, no significant biosecurity breaches were reported to the New Zealand government following the resumption of trade. The United States requested a modification of these mitigation measures to reduce costs to U.S. exporters and New Zealand importers without compromising New Zealand,s biosecurity standards. MAF responded by reducing the table grape inspection levels for the 2004 shipping season, but mandatory cold treatment remains in force. As of early December 2004, MAF had not responded to USDA documentation supporting the elimination of the unwarranted cold treatment of California grapes.

Pork Meat. In June 2002, New Zealand modified its regulations imposed a year earlier requiring pork meat products imported from countries with porcine reproductive and respiratory

syndrome (PRRS), including the United States, to be cooked to a certain temperature, either before export or after import in special facilities in New Zealand. The cooking requirement results in a darker meat color, which tends to be negatively received by consumers. New Zealand revised its import regulations in 2003, allowing pig meat products from the United States to be microwave treated. MAF again modified its import regulations for U.S. pork meat in November 2004, this time allowing entry of pork meat products derived from pigs imported live into the United States from Canada for immediate slaughter. Prior to this, New Zealand,s IHS had allowed entry only of U.S. pork meat derived from U.S. resident animals or from pigs resident and slaughtered in Canada and further processed in the United States. The Ministry of Agriculture remains willing to consider scientific evidence related to the PRRS issue that would justify a review of its import health standard for pork meat.

Poultry Meat. New Zealand implemented measures that suspended the importation of poultry meat from various nations, including the United States, in late 2001 because of the risk of introducing infectious bursal disease (IBD). U.S. exporters are unable to sell uncooked poultry meat to New Zealand, while cooked poultry meat is restricted to canned products. Discussions between the United States and New Zealand on this issue continue.

Soybean meal. New Zealand,s import regulations for oilseed meals were modified in May 2004, requiring an official phytosanitary certification to address certain manufacturing practices. USDA does not monitor or inspect U.S. production facilities for soybean meal and was unable to meet New Zealand,s new certification requirements. Following consultations with USDA, MAF again amended its IHS for oilseed meals in August 2004 and November 2004. These revisions allow an independent verification authority in conjunction with a manufacturer,s certificate to address the production process issue and, taken together with USDA documentation, meet New Zealand,s import requirements. The new import regulations establish clarity and certainty regarding certification of U.S. soybean meal and allowed normal sales and supplies to resume.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In October 2003, the New Zealand Parliament enacted a ban on the parallel importation of films, videos and DVDs for the initial nine months after a film's international release. The ban applies only to film media, not to parallel importation of music, software and books. It is scheduled to sunset in 2008, unless extended.

The new legislation, which amended the Copyright Act 1994, also makes it easier to challenge copyright violations in court by shifting the burden of proof in certain copyright infringement cases to the defendant, who must prove that an imported film, sound recording or computer software is not a pirated copy.

By omitting a ban on parallel imports of music, software and books, however, the legislation failed to roll back all the provisions of the New Zealand government's 1998 amendment to the Copyright Act. While the legislation addressed many of the U.S. film industry's concerns about parallel importing, other U.S. industries, particularly producers and distributors of music and software, have voiced concerns that allowing parallel imports makes it more difficult to detect and combat piracy and erodes the value of their products in New Zealand and in third-country markets.

The music industry also is concerned about a proposed amendment to the Copyright Act that would legalize the duplication of sound recordings in other formats for a purchaser's private use. The government says this would enable consumers to employ new digital technologies and would legalize what already is common practice. The music industry warns that such an exception to copyright protection would make copyright infringement difficult to police, send the wrong message to consumers and cost the industry an estimated $13.7 million in sales revenue and $1.97 million in profits per year.

With amendments proposed in June 2003 to the Copyright Act 1994, the government aims to bring New Zealand law into closer conformity with the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). The amendments are intended to reflect developments in digital technologies and international developments in copyright law and are expected to be introduced in 2005. If this legislation is enacted, the New Zealand government will determine whether to accede to the WCT and WPPT treaties.

New Zealand also took a number of actions to strengthen its IPR enforcement regime. To deter counterfeiting and copyright piracy, the Trade Marks Act 2002, which entered into force in August 2003, creates new criminal offenses for

counterfeiting trademarks and increases the penalties for pirating copyright goods. For those offenses, the act provides for penalties of up to NZ $150,000 (US $97,065) in fines or up to five years' imprisonment.

Following a government review of the Patents Act 1953 that began in August 2000, the Ministry of Economic Development has drafted legislation intended to bring the act into closer conformity with international standards. The draft would keep the maximum patent term at 20 years, but would tighten the criteria for granting a patent, from a patentable invention being new in New Zealand, to being new anywhere in the world and involving an inventive step.

The draft's prohibition of patents for methods of medical treatment concerns some pharmaceutical companies. The industry also is concerned by the Cabinet's decision in mid-2004 to halt a study on the economic impact of extending patent terms for pharmaceuticals. In a submission to the New Zealand government, the pharmaceutical industry group, Researched Medicines Industry Association of New Zealand, had contended that New Zealand's effective patent life for pharmaceuticals had been substantially eroded. It recommended adoption of a supplementary protection certificate arrangement, similar to those used in a number of OECD and European Union countries. This would effectively extend patent protection. However, the draft legislation fails to address this issue.

The pharmaceutical industry also is troubled by an amendment, enacted in December 2002, to the Patents Act 1953. The amendment provided that it is not a patent infringement for a person to make, use, exercise or vend an invention for purposes related to gaining regulatory approval in New Zealand or other countries. It effectively expedites the approval process for generic competition to products going off patent. The amendment was passed quickly and not as part of the ongoing and thorough review of the Patents Act. The pharmaceutical industry is strongly opposed to this "springboarding" legislation.

The United States continues to monitor developments in IPR issues closely.

SERVICES BARRIERS

Local Content Quotas

Radio and television broadcasters have adopted voluntary local content targets, but only after the New Zealand government made it clear that it would otherwise pursue mandatory quotas. While New Zealand government officials have said they are sensitive to the implications of quotas under the WTO General Agreement on Trade in Services (GATS), they reserve the right to impose them.

Telecommunications

U.S. industry has expressed concern about the cost of completing calls onto mobile networks in New Zealand, which ranks among the highest in the world for this charge. The New Zealand regulating authority began an investigation in May 2004 into mobile termination rates and in an October 2004 draft decision said that mobile network operators had been able to set unreasonably high rates because of limited competition in the market. The authority called for such charges to be regulated. Its final recommendation, expected in early 2005, may or may not retain the draft decision's recommendations. The final decision rests with the Communications Minister, who can accept the regulating authority's recommendation, reject it or refer it back for further consideration. The final decision is expected in late 2005.

Competitors of the formerly state-owned monopoly Telecom were disappointed by the New Zealand government's decision in May 2004 against unbundling the local loop. Although under competitive pressure, Telecom still dominates the market. The Communications Minister accepted the regulator's recommendation against ordering Telecom to open its national fixed-line network to competitors. Saying he aimed to increase competition in broadband services, the Minister also agreed with the regulator's recommendation to require bitstream unbundling, or access to Telecom's equipment by service providers in order to sell their own broadband services, and to accept Telecom's offer to provide within six months unbundled partial private circuits, primarily used for business data services. As of the end of 2004, however, Telecom and regulators had yet to agree on commercial terms and conditions for the unbundled bitstream service.

INVESTMENT BARRIERS

Investment Screening

New Zealand screens certain types of foreign investment through the Overseas Investment Commission (OIC). Amid a growing public outcry about foreigners buying coastal properties, the New Zealand government in November 2003

launched a review of OIC's powers. That review led to proposed legislation, introduced in November 2004, that would raise the minimum threshold for scrutiny of proposed business purchases, but toughen the screening and monitoring of land purchases. Under the legislation, the threshold for screening non-land business assets would be increased from NZ $50 million (US $35.7 million) to NZ $100 million (US $71.3 million), where a foreigner proposes to take control of 25 percent or more of a business. Government approval still would be required for purchases of land over 5 hectares (12.35 acres) and land in certain sensitive or protected areas. For land purchases, foreigners who do not intend to live in New Zealand would have to provide a management proposal covering any historic, heritage, conservation or public access matters and any economic development planned. That proposal would have to be approved and generally made a condition of consent. In addition, investors would be required to report regularly on their compliance with the terms of the consent. Overseas persons would continue to have to demonstrate the necessary experience to manage the investment. Any application involving land in any form still would have to meet a national interest test. The United States has raised concerns about the continued use of this screening mechanism. New Zealand's commitments under the GATS Agreement of the WTO are limited as a result of New Zealand's screening program.

OTHER BARRIERS

Pharmaceuticals

The U.S. Government continued to raise concerns about New Zealand's pharmaceutical sector policies, which do not appropriately value innovation and diminish the contribution of New Zealand to research and development of innovative pharmaceutical products. New Zealand's Pharmaceutical Management Agency (PHARMAC) administers a Pharmaceutical Schedule that lists medicines subsidized by the New Zealand government and the reimbursement paid for each pharmaceutical under the national health care system. The schedule also specifies conditions for prescribing a product listed for reimbursement. PHARMAC, a stand-alone Crown entity structured as a statutory corporation, accounts for 73 percent of expenditures on prescription drugs in New Zealand.

New Zealand does not directly restrict the sale of non-subsidized pharmaceuticals in the country. However, private medical insurance companies will not cover non-subsidized medicines, and doctors are often reluctant to prescribe non-subsidized medicines for their patients, who would have to pay out-of-pocket costs. Thus, PHARMAC's Pharmaceutical Schedule decisions determine the selection and pricing of the bulk of pharmaceutical drugs sold in New Zealand. Its decisions have a major impact on the availability and price of non-subsidized medicines and the ability of pharmaceutical companies to sell their products in the New Zealand market.

The United States has serious concerns relating to the transparency, predictability and accountability of PHARMAC's operations. U.S. pharmaceutical suppliers report that the methodology used to determine Pharmaceutical Schedule decisions lacks transparency. The Boards of PHARMAC and the Researched Medicines Industry Association of New Zealand have been meeting to discuss these concerns. The U.S. Government will continue to closely monitor developments in this sector.

On December 10, 2003, the New Zealand and Australian governments signed a treaty to create a joint agency to regulate medical devices, prescription and over-the-counter medicines, dietary and nutritional supplements, and cosmetics such as sun creams. Aside from prescription pharmaceuticals, New Zealand does not currently regulate market entry of these products. TThe new agency is scheduled to begin operations July 1, 2005. Each country's government will continue to determine funding of prescription medicines. The new agency may charge full cost-recovery fees to register products and require additional documentation and assessments for certain products, even if they already have U.S. Food and Drug Administration approval. U.S. manufacturers and distributors of non-pharmaceutical therapeutic products have expressed concerns that those requirements would be overly burdensome and costly and serve to discourage exports of their products from the United States to New Zealand.
End text of submission.
Swindells